



TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESAPHARMA),]	
]	
Petitioner,]	
]	
vs.]	Cancellation No. 92032341
]	
MICHEL FARAH,]	
]	
Registrant.]	
]	

PETITIONER'S RESPONSE TO REGISTRANT'S MOTION
FOR FURTHER ENLARGEMENT OF ITS TESTIMONY PERIOD

On March 1, 2005, after the close of Registrant's long extended testimony period, it filed a further "Third Motion for Enlargement of Testimony Period". Accordingly, and in view of the filing outside of the period sought to be enlarged, this Motion should be treated as a Motion to Reopen the Testimony Period.

The Board on June 30, 2004 reset the Testimony Periods, setting Registrant's testimony period to commence on



03-02-2005

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October 30, 2004. Registrant has had over 4 full months to arrange for and to take its testimony and has failed to do so. It now seeks to reopen its testimony period for yet another 45 days.

It is obvious that the Registrant is merely continuing its delaying tactics in this case which will be obvious from a review of the record.

Counsel for Petitioner, Pramila S.R.L. (EASAPHARMA), previously responded to an earlier delaying motion submitted by the Registrant in this case. This previous Motion sought a 60 day extension of its testimony period. This was the second extension of the testimony period sought by Registrant in this proceeding.

In its first Motion for a 30 day extension, Registrant falsely stated that the extension was "needed to accommodate the schedules of attorneys for both sides". (Emphasis added)

At no time did the undersigned attorney ever state to counsel for the Registrant that he could not adjust his schedule to accommodate the testimony period. Most, if not all attorneys, have a crowded schedule, and continued

extensions for the purported purpose of accommodating schedules must have its limits.

It is noted that the Interlocutory Attorney has not yet granted the earlier extension request for extension or commented on Petitioner's objections.

These proceedings have been pending for well over three years. There have already been six different extensions of time requested by the Registrant during this pendency. Earlier, Registrant sought and was granted the right to take Testimony abroad by written interrogatories. Considerable time and expense were undertaken by the Petitioner to prepare and serve cross-questions and to prepare the witness for such interrogatories to be taken in Milan, Italy. The Registrant never moved forward with the taking of these discovery interrogatories, all to the great inconvenience, prejudice and expense to Petitioner.

Further, Registrant sought to take the discovery deposition of Petitioner's agent and issued several Subpoenas in this regard from the United States District Court in New York. After counsel had made appropriate travel and hotel

arrangements to go to Brooklyn, these depositions were cancelled.

A party moving for the reopening of its testimony period, must show that its failure to act during the time previously allotted was the result of *excusable neglect*. See TBMP §509.01(b) and Fed. R. Civ. P. 6(b) in this regard.

This Board in the case of *Pumpkin Ltd. v. The Seed Corps.* 43 USPQ2d 1582 (TTAB 1997) adopted the test for such reopening as set forth by the Supreme Court in *Pioneer Investment Services Company v. Brunswick Associates LTD Partnership* 507 U.S. 380 (1993).

These cases held that "excusable neglect" must take into account all of the relevant circumstances surrounding the party's omission or delay, including

- (1) the danger of prejudice to the nonmovant,
- (2) the length of the delay and its possible impact on the judicial proceedings,
- (3) the reason for the delay, including whether it was within the reasonable control of the movant, and
- (4) whether the movant acted in good faith.

Based upon the failure of the Registrant to take its expected testimony, Petitioner filed its Brief in this proceeding at the TTAB before being served with this last Motion. The time and expense of preparing this Brief would

result in severe prejudice on the Registrant and the Brief would have to be discarded. Counsel for the Petitioner purposely insured that his calendar was clear during the month of February so that a trip to Florida to attend the Registrant's testimony deposition could be scheduled. Counsel has already planned on an extended three week trip to the far east commencing on March 12, 2005.

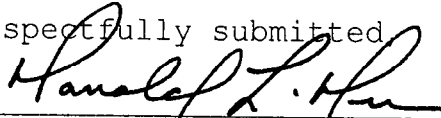
The reason for the delay by the Registrant, including whether it was within the reasonable control of the movant was deemed to be the most important of the *Pioneer* elements in any particular case. This Board has held that counsel's press of other business (as previously argued in the prior extension request) and misreading of a relevant rule were circumstances well within the control of counsel. See *Baron Phillipe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848 (TTAB 2000).

Registrant who seeks to reopen its testimony period is required to set forth with particularity the detailed facts upon which its excusable neglect claim is based; mere conclusory statements have been held to be insufficient. *Gaylord Entertainment Co. v. Calvin Gilmore Productions Inc.*

59 USPQ2d 1369 (TTAB 2000). It was also held in *Pioneer* that it is irrelevant if the failure to take timely action was the result of the party's counsel's neglect and not the party itself since a party must be held accountable for the acts and omissions of its counsel.

Accordingly, the most recent Motion should be treated as one for the reopening of Registrant's testimony period and should be summarily denied.

Respectfully submitted



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March 2, 2005

CERTIFICATE OF SERVICE

I certify that a copy of the above Petitioner's Response to Motion for Enlargement was served by first class mail with proper postage affixed this 2nd day of March, 2005 on counsel for Registrant, David M. Rogero, Esq., 2600 Douglas Road, Suite 600, Coral Gables, FL 33134.



Donald L. Dennison